
***DRAFT OPERATIONAL
POLICIES AND PROCEDURES (OPPs)
of the
CALIFORNIA OCEAN SCIENCE TRUST***

January 10, 2003 Draft

FOR DISCUSSION PURPOSES

DRAFT OPERATIONAL POLICIES AND PROCEDURES (OPPs)
of the
CALIFORNIA OCEAN SCIENCE TRUST
January 10, 2003 Draft

ARTICLE ONE
Purpose

Section 1.1 Description

The purposes of the California Ocean Science Trust (Trust) are defined in Section 36990 of the California Public Resources Code (PRC) as follows:

1. To seek funds for California ocean resource science projects, emphasizing the development of new funding sources.
2. To fund California ocean resource science projects that help fulfill the missions of the state's ocean resource management agencies.
3. To encourage coordinated, multi-agency, multi-institution approaches to ocean resource science.
4. To encourage graduate education programs in management-oriented ocean resource science in public and private universities and colleges in California.
5. To encourage new technologies that reduce the cost, increase the amount, or improve the quality of ocean resource management information.
6. To promote more effective coordination of California ocean resource science useful to management agencies.

Section 36990 further authorizes the Secretary of the Resources Agency to enter into an agreement with an existing non-profit corporation that has broad experience as the trustee of public funds, court-ordered mitigation funds, or other funds used to assist public agencies in carrying out their responsibilities, to establish the California Ocean Trust Fund (Fund) and serve as Manager for the Fund

ARTICLE TWO
Board of Trustees

Section 2.1 General Powers

Subject to the limitations of state and federal law and these operational policies and procedures (OPPs), the activities of the Trust shall be conducted by or under the direction of the Board of Trustees (Board). The Board may delegate the management of the activities of the Trust under the authority of the Board to any person or persons or committees, provided that the activities of the Trust shall be managed and all powers of the Trust shall be exercised under the ultimate direction of the Board. In carrying out such responsibilities, within the limitations of Sections 36990-36995 of the California PRC, the Board shall formulate policy related to the Trust's mission, goals, and financial affairs and shall monitor, evaluate, and provide direction regarding the Trust's performance.

Section 2.2 Relationship to the Manager of the Fund

Section 36990 of the California PRC stipulates that the Trust may be established within an existing nonprofit corporation (Manager of the Fund). The Board shall advise the Manager of the Fund and its representative in carrying out its responsibilities toward the Trust under its memorandum of agreement

with the California Resources Agency. The Board shall also direct the Manager of the Fund in carrying out responsibilities separately agreed to by the Board and the Manager of the Fund.

Section 2.3 Specific Powers and Responsibilities

The Board shall have the following powers in addition to the other powers enumerated in these OPPs and the other powers permitted by law:

- To adopt, amend, or repeal operational policies and procedures.
- To elect and remove officers; prescribe such powers and duties for them as are consistent with law and these OPPs.
- To conduct and manage the activities of the Trust for which the Board has authority.
- To advise and direct the Manager of the Fund.
- To solicit and receive funds for the purposes of the Trust to be held and managed by the Manager of the Fund.
- To direct the Manager of the Fund to disburse funds, by grant or contract, for the purposes of the Trust and in accordance with Section 36994 of the California PRC.

Section 2.4 Number of Trustees and Manner of Appointment

The number of Trustees and the manner of their appointment is set forth in Section 36992 of the California PRC.

Section 2.5 Terms of Office

Trustee representatives of the Resources Agency, the Environmental Protection Agency, and the Department of Finance shall not have terms. All other trustees shall be appointed for a term of two (2) calendar years. A trustee may serve three (3) consecutive terms and, if appointed to fill an unexpired term, up to six months of an unexpired term.

Section 2.6 Vacancies and Removal

Trustees serve at the pleasure of the appointing authority as specified in Section 36992 of the California PRC. Any trustee may resign effective upon giving written notice to the Chair of the Board, the Secretary of the Board, or the Secretary for Resources.

Vacancies resulting from resignation, death, declaration by a court of unsound mind, conviction of a felony, a breach in standards of conduct for a trustee, or an increase in the authorized number of trustees, will be filled by appointment.

Section 2.7 Trustee Expenses

Trustees shall serve without compensation. However, trustees may be reimbursed by the Trust for reasonable expenses if the Board adopts policies governing such reimbursements.

ARTICLE THREE Officers

Section 3.1 Officers

The officers of the Trust shall consist of the Chair, Vice Chair, Secretary and Treasurer, and each of them shall be appointed by the Board. The Trust may also have other officers as may be appointed by the Board. Any two or more offices may be held by the same person, except that neither the Secretary nor Treasurer may serve concurrently as the Chair of the Board. The term of all officers of the Trust

shall be from the date appointed to the date of the next succeeding annual meeting of the Trustees and until the successors to such officers are appointed and qualified.

Elected officers shall serve at the pleasure of the Board. Any officer may be removed by a vote of the Board at any time.

Section 3.2 Duties of the Chair

The Chair of the Board shall:

- Assure the integrity of the Board process, including effective conduct of Board meetings, adherence to adopted policies and procedures, and adherence to the requirements of the Trust in Section 36994 of the California PRC.
- Call meetings of the Board and, when present, preside at meetings of the Board.
- Serve as an ex-officio member of any Board committee.
- Ensure that the relationship between the Board and the Manager of the Fund adhere to agreements between the California Resources Agency and the Manager of the Trust, and between the Board and the Manager of the Fund.
- Perform such other duties as determined by the Board.

Section 3.3 Duties of the Vice Chair

The Vice Chair shall:

- In the absence or disability of the Chair, perform all duties of the Chair and, when so acting, have all the powers of, and be subject to all the restrictions upon, the Chair.
- Perform such other duties as determined by the Board.

Section 3.4 Duties of the Secretary

The Secretary shall:

- Record or cause to be recorded, and keep or cause to be kept, at such place as the Board may order, minutes of all meetings, proceedings and actions of the Board and its committees, with the time and place of holding, whether regular or special and, if special, how authorized, the notice given, and the names of those present at such meetings.
- Distribute or cause to be distributed minutes to the Board and the Manager of the Fund promptly after each meeting.
- Give or cause to be given, notice of all meetings of the Board and the committees required by these OPPs or by law to be given.
- Prepare or cause to be prepared, in cooperation with the Treasurer and the Manager of the Fund, the report to the California State Legislature required by Section 36994 of the California PRC.
- Perform such other duties as determined by the Board.

Section 3.5 Duties of the Treasurer

The Treasurer of the Trust shall:

- Maintain or cause to be maintained adequate accounts of the financial transactions of the Trust.
- Inform and advise the Board on the management and investment of the funds of the Trust by the Manager of the Fund, including as to whether they are invested and managed in accordance with the Nonprofit Public Benefit Corporation Law (Part 2, commencing with Section 5110, of Division 2 of Title 1 of the Corporations Code) as required by Section 36994 of the California PRC.
- Prepare or cause to be prepared, in cooperation with the Secretary and the Manager of the Fund, the report to the California State Legislature required by Section 36994 of the California PRC.
- Perform such other duties as determined by the Board.

ARTICLE FOUR Committees

Section 4.1 Committees of Trustees

The Board may, by resolution adopted by a majority vote of the Board then serving, create one or more committees, each consisting of one or more trustees. Appointment to such committees shall be by a majority vote of the trustees then serving, and the Chair of the Board shall appoint the chairs of such committees. Any such committee, to the extent provided in the resolution of the Trust or in these OPPs, shall have all the authority of the Trust, except that no committee may:

- Amend or repeal operational policies and procedures or adopt new operational policies and procedures of the Board.
- Amend or repeal any resolution of the Trust.
- Appoint committees of the Trust or the members of committees.
- Approve disbursement of funds of the Trust.

Section 4.2 Advisory Committees

As provided for in Section 36995 of the California PRC, the Board may seek the assistance of advisers, designate one or more advisory committees, or otherwise consult with knowledgeable individuals in regard to the business of the Trust. Such advisers and committees shall not have the authority of the Board to make decisions on behalf of the Trust, but shall be restricted to making recommendations to the Board or Board committees, and implementing Board or Board committee decisions and policies under the supervision and control of the Board or a Board committee.

Advisers and advisory committee members shall serve without compensation. However, advisers may be reimbursed by the Trust for reasonable expenses.

Section 4.3 Duties of Committee Chairs

Committee chairs shall have the following responsibilities:

- Ensure the committee's adherence to the OPPs and the terms of the Board resolution that created the committee.
- Preside over meetings of the committee.
- Keep, or cause to be kept, minutes of committee meetings and transmit those minutes and otherwise report on the activities of the committee to the Board.

ARTICLE FIVE Meetings

Section 5.1 Place of Meetings

Meetings of the Board may be held at any place within the State of California that has been designated in the notice of the meeting or by resolution of the Board.

Section 5.2 Annual Meeting

The Board shall hold at least one meeting each calendar year for the purpose of electing officers, organization, and the transaction of other business.

Section 5.3 Special Meetings

Special meetings of the Trust may be called at any time by the Chair or at the request of three trustees then serving.

Section 5.4 Notice

Meetings of the Board shall be held upon at least 15 days' notice. Notice shall be delivered personally to each trustee or communicated to each trustee by facsimile, electronic mail, or first-class mail, charges prepaid, addressed to the trustee at the trustee's address as it is shown upon the records of the Trust. The notice shall state the time and place of the meeting or the means of participating by telephone in the case of a meeting held by conference telephone.

Section 5.5 Participation in Meetings by Conference Telephone

Trustees may participate in any meeting of the Board through the use of speaker phone, conference telephone, electronic video screen communication, or other communications equipment. Participation in a meeting through remote communication constitutes presence in person at that meeting so long as all trustees participating in the meeting are able to communicate with one another concurrently.

Section 5.6 Actions at a Meeting; Quorum and Required Vote

Fifty percent plus one of the trustees then serving shall constitute a quorum for the transaction of the Board's business, except to adjourn. Every decision at a meeting that is duly noticed at which a quorum is present, is an act of the Board if it is decided by a majority vote. A trustee may vote by proxy on any issue by notifying, in writing, two trustees who participate in the meeting, with the Chair or Vice Chair being one of the two trustees so notified.

Section 5.7 Adjourned Meeting and Notice

A majority of the trustees present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment

ARTICLE SIX Indemnification of Trustees, Officers and Other Agents of the Trust; Purchase of Liability Insurance

- (a) For the purposes of this article, "agent" means any person who is or was a trustee, officer, or other agent of the Trust; "proceeding" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and "expenses" include without limitation attorneys' fees and any expenses of establishing a right to indemnification under paragraph (d) or paragraph (e)(2) of this article.
- (b) The Trust shall indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the Trust to procure a judgment in its favor, an action brought under Section 5233 of the California Corporations Code, or an action brought by the Attorney General for any breach of duty relating to assets held in charitable trust) by reason of the fact that such person is or was an agent of the Trust, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Trust and, in the case of a criminal

proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement or conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

- (c) The Trust shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the corporation to procure a judgment in its favor, or brought under Section 5233, or brought by the Attorney General for breach of duty relating to assets held in charitable trust, by reason of the fact that such person is or was an agent of the Trust, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith, in a manner such person believed to be in the best interests of the Trust, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made under this paragraph (c):
 - (1) In respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable to the Trust in the performance of such person's duty to the Trust, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses which such court shall determine;
 - (2) Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or
 - (3) Of expenses incurred in defending a threatened or pending action that is settled or otherwise disposed of without court approval unless it is settled with the approval of the Attorney General.
- (d) To the extent that an agent of the Trust has been successful on the merits in defense of any proceeding referred to in paragraph (b) or (c) or in defense of any claim, issue, or matter in the proceeding, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection with the proceeding.
- (e) Except as provided in paragraph (d), any indemnification under this article shall be made by the Trust only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in paragraph (b) or (c), by:
 - (1) A majority vote of a quorum consisting of trustees who are not parties to such proceeding; or
 - (2) The court in which such proceeding is or was pending upon application made by the Trust, the agent, or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by the Trust.
- (f) Expenses incurred in defending any proceeding may be advanced by the Trust prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in this article.

- (g) Nothing contained in this article shall affect any right to indemnification to which persons other than trustees and officers of the Trust may be entitled by contract or otherwise.
- (h) No indemnification or advance shall be made under this article, except as provided in paragraph (d) or paragraph (e)(2), in any circumstance where it appears:
 - (1) That it would be inconsistent with a resolution of the Board of Trustees, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or
 - (2) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.
- (i) Upon and in the event of a determination by the Board of Trustees of the Trust to purchase indemnity insurance, the Trust shall purchase and maintain insurance on behalf of any agent of the Trust against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not the Trust would have the power to indemnify the agent against such liability under the provisions of this article; provided, however, that the Trust shall have no power to purchase and maintain such insurance to indemnify any agent of the Trust for a violation of Section 5233.

ARTICLE SEVEN

Standard of Care

A trustee shall perform the duties of a trustee, including duties as a member of any Board committee on which the trustee may serve, in good faith, in a manner such trustee believes to be in the best interest of the Trust and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

In performing the duties of a trustee, a trustee shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

- one or more officers or the Manager of the Fund whom the trustee believes to be reliable and competent as to the matters presented;
- counsel, independent accountants, or other persons as to matters which the trustee believes to be within such person's professional or expert competence; or
- a Board committee upon which the trustee does not serve, as to matters within its designated authority, provided that the trustee believes such committee merits confidence; so long as in any such case, the trustee acts in good faith after reasonable inquiry when the need therefore is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

Except as provided in Article VII below, a person who performs the duties of a trustee in accordance with this Article VI shall have no liability based upon any failure or alleged failure to discharge that person's obligations as a trustee, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which the Trust, or assets held by it, are dedicated.

ARTICLE EIGHT Conflicts of Interest

Section 8.1 Definition

Conflict of interest means a transaction to which the Trust is a party and in which one or more trustees has a direct or indirect material financial interest.

Section 8.2 Direct Conflict of Interest

Section 36993 of the California PRC states that any person who might reasonably be expected at some time to derive a direct financial benefit from the activities of the Trust shall be ineligible to serve as a trustee.

Section 8.3 Indirect Conflict of Interest

Section 36993 of the California PRC requires that the Board, subject to the approval of the Secretary for Resources, adopt definitions and rules for the Trust with respect to indirect conflicts of interest.

Section 8.4 Rules Governing Conflicts of Interest

A trustee is expected to inform the Board of any possible direct or indirect conflict of interest. If the Board finds that a proposed transaction would constitute a conflict of interest for a trustee, that trustee shall recuse himself or herself from discussion of and voting on that transaction. Trustees who have recused themselves from a decision of the Trust may be counted in determining the presence of a quorum.

The Board may approve a transaction that involves a conflict of interest of one or more trustees if the transaction is approved by a court or the California State Attorney General or if the Board determines, before the transaction, that:

- the Trust is entering into the transaction for its own benefit,
- the transaction is fair and reasonable to the Trust at the time, and
- after reasonable investigation, the Board determines that the Trust could not obtain a more advantageous transaction with reasonable effort under the circumstances.

Such determinations must be made by the Board in good faith, with knowledge of the material facts concerning the transaction and the interest of the trustee or trustees in the transaction, and by a majority vote of the trustees then in office, without counting the vote of the trustee or trustees with a conflict of interest.

ARTICLE NINE Maintenance and Inspection of Trust Records

The accounting books, records, and minutes of proceedings of the Board of Trustees and any committees shall be kept at such place or places designated by the Board of Trustees, or, in the absence of such designation, at the offices of the Manager of the Fund. The minutes shall be kept in written or typed form, and the accounting books and records shall be kept either in written or typed form or in any other form capable of being converted into written, typed, or printed form.

Every trustee shall have the absolute right at any reasonable time to inspect all books, records, and documents of every kind and the physical properties of the Trust. The inspection may be made in person or by an agent or attorney, and shall include the right to copy and make extracts of documents.

**ARTICLE TEN
Amendments**

New operational policies and procedures may be adopted or these OPPs may be amended or repealed by a majority vote of the Board at any duly called meeting of the Board at which a quorum is present.

CERTIFICATE OF SECRETARY

I, the undersigned, certify that I am the currently appointed and acting Secretary of the Board of Trustees for the California Ocean Science Trust, and the above operational policies and procedures, consisting of nine (9) pages, are the operational policies and procedures of this Board of Trustees as adopted at a meeting of the Board of Trustees held on **[INSERT DATE]**.

Executed at **[INSERT LOCATION]**, California.

Secretary

Date

CONTENTS

ARTICLE ONE Purpose	1
Section 1.1 Description	1
ARTICLE TWO Board of Trustees	1
Section 2.1 General Powers	1
Section 2.2 Relationship to the Manager of the Fund	1
Section 2.3 Specific Powers and Responsibilities	2
Section 2.4 Number of Trustees and Manner of Appointment	2
Section 2.5 Terms of Office	2
Section 2.6 Vacancies and Removal	2
Section 2.7 Trustee Expenses	2
ARTICLE THREE Officers	2
Section 3.1 Officers	2
Section 3.2 Duties of the Chair	3
Section 3.3 Duties of the Vice Chair	3
Section 3.4 Duties of the Secretary	3
Section 3.5 Duties of the Treasurer	3
ARTICLE FOUR Committees	4
Section 4.1 Committees of Trustees	4
Section 4.2 Advisory Committees	4
Section 4.3 Duties of Committee Chairs	4
ARTICLE FIVE Meetings	4
Section 5.1 Place of Meetings	4
Section 5.2 Annual Meeting	4
Section 5.3 Special Meetings	5
Section 5.4 Notice	5
Section 5.5 Participation in Meetings by Conference Telephone	5
Section 5.6 Actions at a Meeting; Quorum and Required Vote	5
Section 5.7 Adjourned Meeting and Notice	5
ARTICLE SIX Indemnification of Trustees, Officers and Other Agents of the Trust; Purchase of Liability Insurance	5
ARTICLE SEVEN Standard of Care	7
ARTICLE EIGHT Conflicts of Interest	8
Section 8.1 Definition	8
Section 8.2 Direct Conflict of Interest	8
Section 8.3 Indirect Conflict of Interest	8
Section 8.4 Rules Governing Conflicts of Interest	8
ARTICLE NINE Maintenance and Inspection of Trust Records	8
ARTICLE TEN Amendments	9